

Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of)	
)	
The Missoula Plan Intercarrier)	Docket 01-92
Compensation Reform Plan)	DA 06-1510

Comments of The Rural Alliance

On May 1, 2008, the Commission adopted an interim cap on payments to competitive eligible telecommunications carriers (CETCs). As the Commission stated,

“This action was a critical first step toward comprehensive reform of Universal Service and intercarrier compensation, two carrier compensation regimes that are directly interrelated. Such comprehensive reform is critical to ensuring the continued provision of affordable telecommunications for all Americans....The Commission’s action to cap competitive ETC support...will stabilize the Fund, enabling the Commission to now move forward expeditiously on comprehensive reform of both the universal service program and intercarrier compensation. Commenters wishing to refresh the record on open dockets addressing Universal Service and/or intercarrier compensation are encouraged to do so promptly...”¹

The Rural Alliance appreciates this opportunity to refresh the record in the Commission’s intercarrier compensation proceeding and related proceedings. In particular, the Rural Alliance applauds the Commission’s decision to move forward with intercarrier compensation reform, and the Commission’s recognition that intercarrier compensation revenues (along with universal

¹ “*Interim Cap Clears Path For Comprehensive Reform*,” FCC News Release (May 2, 2008).

service revenues) are critical to the Act's goals of providing sufficient and predictable revenues to enable the provision of universally available, quality, basic and advanced services in rural high cost to serve areas at reasonable and affordable rate levels that are comparable to rates and services offered in urban areas.²

The Rural Alliance believes that any intercarrier compensation plan adopted by the Commission must incorporate the following concepts that are essential for rural rate-of-return carriers and their customers:

1. Revisions to the existing intercarrier compensation framework must recognize distinctions applicable to incumbent local exchange carriers (ILECs) subject to rate-of-return regulation;
2. Rural rate-of-return ILECs should (a) be able to establish cost-based intercarrier compensation rates that recognize the value other carriers or service providers receive when they utilize the rural networks to originate, transport and/or terminate traffic, (b) receive payment at applicable intercarrier compensation rates by *all* carriers or service providers for their use of rural ILECs' networks to provide their services, and (c) receive call signaling information and call detail records from *all* carriers or service providers that use rural ILECs' networks to transmit voice traffic so that the ILECs can bill applicable intercarrier compensation charges. Access charges are an integral component of rural ILECs' rate structure. The Commission should not

² 47 U.S.C. §254(b).

abandon a regulatory framework that is crucial to the continuation of investment in high cost areas by rural ILECs. The Commission should take immediate steps to close loopholes and ambiguities that are being exploited by some carriers to avoid payments to rural ILECs to originate, transport and/or terminate traffic. Fairness and equity among competing carriers and service providers that offer the public interexchange voice services demands that all pay the same rates to interconnect with rural ILEC networks. It is not fair, equitable, or appropriate for providers of interconnected voice over Internet protocol (VoIP) services or any other provider to avoid payments that a traditional interexchange carrier (IXC) must pay. All should play under the same rules - it is equitable, it is competitively neutral, and it will contribute to the continued availability of modern communications services in rural areas. The Commission's failure to resolve these issues has distorted the market. The Rural Alliance urges the Commission to resolve these matters now before they get worse.

3. To the extent that changes in the existing intercarrier compensation rates are adopted by the Commission, rural rate-of-return carriers should receive recovery of the displaced interconnection revenue from a new sustainable mechanism that is only available to carriers that experience such access rate reductions;
4. To the extent that changes in the existing interconnection rules are

undertaken, those rule changes should reflect the operational and legal realities which limit the obligations of rural ILECs to undertake financial responsibility for the transport of traffic beyond their networks.

As the Commission is aware, because of the significant record that has been compiled in CC Docket No. 01-92, the current intercarrier compensation system is under significant stress and needs to be revised to deal with the multitude of issues that have arisen as competitive carriers have entered the market and as they use the public switched telecommunications network (PSTN) to originate and complete their calls. A comprehensive plan would:

- Minimize rate differences between regulatory jurisdictions and between services and thus minimize arbitrage;
- Retain revenues lost as intercarrier rates are reduced in order to insure that critical revenues are still available to provide reasonably priced, quality basic and advanced services in rural areas that are comparable to those provided in urban areas and to invest in the infrastructure that supports not only incumbent services but also wireless, IP and other services that utilize the rural infrastructure;
- Provide mechanisms and processes to establish equity between states that have already undertaken intercarrier compensation reform and those that have not;
- Resolve many issues that have and continue to consume enormous

resources of carriers and regulators. For instance, (a) resolve the intra-Metropolitan Trading Area (MTA) calling issue; (b) address the virtual NXX issue; (c) provide rules to resolve unbillable “phantom” traffic conflicts, (d) clarify that rural ILECs are not financially responsible for the transport of traffic beyond their networks, etc.

Resolution of these issues would substantially benefit consumers. Rather than focusing resources on intercarrier disputes, all carriers would be able to focus their resources on providing services to rural consumers that are comparable to those provided in urban areas, and new technologies where appropriate.

In order to assist the Commission in its evaluation of reforms to the intercarrier compensation system that can be adopted in the near future, the Rural Alliance submits the following alternatives for the Commission’s consideration:

A. The Missoula Plan - The Rural Alliance continues to support the Missoula Plan for Intercarrier Compensation Reform. While the Plan may not be perfect from any party’s perspective, it reflects an extraordinary effort and encompasses many valuable concepts that warrant consideration by the Commission. From a rural rate-of-return ILEC perspective, the Plan hinges on the creation of a Restructure Mechanism to retain access revenues displaced when intercarrier compensation rate levels are reduced. These revenues are absolutely essential to providing rural consumers with universally available,

quality basic and advanced services at reasonable and affordable rates, while maintaining and upgrading networks in high cost to serve rural areas. As a consequence, the Restructure Mechanism must be sustainable. The rural ILECs, as well as the other supporters of the Missoula Plan, recognize that without the Restructure Mechanism, the Missoula Plan would not be beneficial to rural consumers; just the opposite, it would be harmful.

B. Simplified, But Comprehensive Reform - If the Commission believes that the Missoula Plan cannot be adopted at this time, then the Commission should consider simplified, yet still comprehensive intercarrier compensation reform.

1. To minimize arbitrage, intrastate access rate levels and structure should mirror interstate access rate levels and structure. This step would allow state commissions to opt in and agree to the simplified reform proposal as part of the implementation process.
2. To preserve rural rate-of-return carrier revenues lost as a result of the change in intrastate access rates and structure, on a revenue neutral basis, recover those lost revenues from a Restructure Mechanism.³ The Restructure Mechanism is an access cost recovery mechanism for rural rate-of-return ILECs and as such, and until the Commission eliminates the identical support rule, should not be available to carriers that do not experience an access rate reduction. As in the

³ For the rural rate-of-return ILECs that were Track 2 and 3 carriers in the Missoula Plan, the estimated level of the Restructure Mechanism was slightly over \$600M, assuming the increase in subscriber line charges (SLCs) proposed in the Missoula Plan is adopted.

Missoula Plan, the Restructure Mechanism should be funded in the same manner as the Universal Service Fund (USF) is funded and recovered. A modest increase in SLCs may also be appropriate as a part of the Federal Benchmark Mechanism discussed below.

3. Implement a Federal Benchmark Mechanism to establish equity between states that have already undertaken intercarrier compensation reform, and those that have not. The supporters of the Missoula Plan and certain state commissions filed a Federal Benchmark Mechanism amendment to the Missoula Plan with the Commission on January 30 and February 5, 2007.
4. Cap interstate switched access rate levels for rural rate-of-return ILECs when the Commission adopts comprehensive reform, but only if the ongoing shortfall in recovery of rural rate-of-return ILEC interstate switched access revenue requirements above the cap can be assigned to and recovered from a universal service element.⁴ Under this cap, rural rate-of-return ILEC switched access rate levels remain cost based, but are limited by the cap, while the remaining cost based access revenue requirement is assigned for recovery to a universal service element. The cap should be based on switched access rates in effect just prior to the Order adopting this cap. Due to the loss of switched access minutes, there is likely to be continuing upward

⁴ For the National Exchange Carrier (NECA) pool, the cap would reflect the composite pool average switched access rate level. NECA would continue to have the ability to assign pool study areas to rate bands as it does currently.

pressure on switched access rate levels. This change would relieve that pressure while preserving the revenue associated with costs that exceed the capped rate.

5. Adopt changes that will resolve interconnection disputes and ease implementation of interconnection agreements:

- Clarify that rural ILECs do not have an obligation to provide interconnection and pay for transport at a point beyond their network facilities.⁵ In conjunction with this clarification, utilize originating and terminating telephone numbers to jurisdictionalize a call and to determine the appropriate intercarrier compensation for calls.⁶
- Modify the intraMTA rule to preserve rural ILECs' local calling areas. The jurisdiction of calls and the appropriate intercarrier compensation for all calls originating from a rural ILEC's network should be governed by the rural ILEC's local exchange calling area, not the MTA, which is the mobile wireless provider's local calling area.⁷

⁵ See, Rural Alliance Reply Comments, CC Docket No. 01-92 (fil. Feb. 1, 2007), p. 31 ("Section 251(c)(2) of the Act states, in pertinent part, that such carriers only have the 'duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network...at any technical feasible point within the carrier's network....' Section 51.305 of the Commission's rules, in a consistent manner, directs 'an incumbent LEC shall provide...interconnection with the incumbent LEC's network...at any technically feasible point within the incumbent LEC's network....'"). See also, *Id.*, pp. 31-37.

⁶ *Id.*, p. 45.

⁷ See, *Id.*, pp. 37-44.

6. Implement the Comprehensive Solution for Phantom Traffic proposed by the Supporters of the Missoula Plan (Industry Standards for the Creation and Exchange of Call Information)⁸ and in NECA's petition⁹ in order to require all interconnected voice service providers originating and transiting voice traffic to accurately transmit call signaling information and to provide call detail information to the terminating carrier when the call is terminated on the PSTN. Additionally, based on the record developed in the proceeding on the Petition for Reconsideration filed by Arizona Dialtone, Inc. in WC Docket No. 05-68 concerning prepaid calling card services¹⁰, the Commission should resolve disputes over which parties are responsible for payment by assigning such responsibility for originating access charges to the first interconnecting carrier in the call path on a multi-stage "platform" or "gateway" call. The Commission should also clarify the obligations for terminating access.
7. Adopt Embarq's petition forbearing from enforcing the enhanced service provider (ESP) exemption on IP voice calls that terminate to the PSTN.¹¹
8. VoIP - Confirm that all interconnected interexchange voice service calls terminating on the PSTN are subject to existing access charge

⁸ Supporters of the Missoula Plan *Ex Parte*, CC Docket No. 01-92 (fil. Nov. 6, 2006).

⁹ NECA Petition for Interim Order, CC Docket No. 01-92 (fil. Jan. 22, 2008).

¹⁰ Arizona Dialtone, Inc. Petition for Reconsideration, WC Docket 05-68, (fil. Aug. 31, 2006).

¹¹ Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption, WC Docket No. 08-8 (fil. Jan. 11, 2008).

compensation regardless of the technology employed to originate the call. Nevertheless, should the Commission decide that all VoIP traffic is jurisdictionally interstate, then the costs associated with intrastate VoIP, in addition to the revenues, need to be moved to the interstate jurisdiction so that revenues will jurisdictionally match the costs.

9. Revise the basis of recovery for the USF to a broader and more sustainable base such as working telephone numbers and connections, including all broadband services and connections.

C. Interim Intercarrier Compensation Reform – If the Commission is currently unable to adopt either the “Missoula Plan” or the “Simplified, but Comprehensive Reforms” discussed above because certain of the proposals contained in each of the plans involve jurisdictional issues that have yet to be resolved¹² or involve the creation of a new access recovery mechanism, then at the very least the Commission should adopt intercarrier compensation changes that are squarely within its jurisdiction. These changes are those discussed in B4 to B9 above:

- B4 – Cap the interstate switched access rate level and recover the revenue requirement shortfall from a universal service element.
- B5 – Adopt specific interconnection clarifications and rule changes.
- B6 – Adopt phantom traffic rule changes.
- B7 – Adopt Embarq’s Petition.

¹² For instance, the issue of preemption of state jurisdiction over intrastate access rates and structure versus the offering of incentives to states to mirror interstate rates and structure without preemption.

- B8 - Confirm that VoIP pays access charges.
- B9 – Broaden the recovery base of the universal service mechanisms.

The Rural Alliance would prefer a comprehensive solution to intercarrier compensation reform. However, if that is not possible at this time, then at the least, the reforms discussed in C above should be quickly adopted by the Commission.

For the Rural Alliance,

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